

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-02-AT-398
)	
CB Radio, Inc.)	NAL/Acct. No.200332480016
)	
Elizabethton, Tennessee)	FRN 0007-8859-81

MEMORANDUM OPINION & ORDER

Adopted: October 21, 2005**Released: October 25, 2005**

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny the Petition for Reconsideration filed by CB Radio, Inc. (“CB”), licensee of AM radio station WBEJ in Elizabethton, Tennessee. CB seeks reconsideration of the *Forfeiture Order*¹ issued by the Enforcement Bureau (“Bureau”) on August 6, 2004. In that *Forfeiture Order*, the Bureau found CB liable for a monetary forfeiture in the amount of two thousand four hundred dollars (\$2,400) for willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“Rules”)² for failing to register its antenna structure.

II. BACKGROUND

2. CB Radio, Inc. is the licensee of AM radio station WBEJ and the owner of an antenna structure (tower) located in Elizabethton, Tennessee. On September 25, 2001, an agent from the Commission’s Atlanta, Georgia, Field Office (“Atlanta Office”) inspected radio station WBEJ and found that CB had not registered WBEJ’s 305 foot tower with the Commission.

3. On October 4, 2001, the Atlanta Office issued a *Notice of Violation* (“*NOV*”) against CB for failure to register the WBEJ tower with the Commission. On October 29, 2002, the Atlanta Office inspected radio station WBEJ a second time and found that CB still had not registered WBEJ’s tower with the Commission. On January 23, 2003, the Atlanta Office issued a *Notice of Apparent Liability for Forfeiture* (“*NAL*”) in the amount of three thousand dollars (\$3,000),³ for apparent willful and repeated violation of Section 17.4(a) of the Rules. In its response to the *NAL*, filed February 24, 2003, CB admitted its tower was not registered until February 14, 2003.⁴ CB gave an account of its attempts to

¹ *CB Radio, Inc.*, 19 FCC Rcd 14869 (Enf. Bur. 2004) (“*Forfeiture Order*”).

² 47 C.F.R. § 17.4(a) requires the owners of existing antenna structures that were assigned painting or lighting requirements before July 1, 1996, to register those antenna structures no later than July 1, 1998.

³ See *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332480016 (Enf. Bur., Atlanta Office, released January 23, 2003).

⁴ The Commission’s records confirm that CB registered WBEJ’s antenna structure on February 14, 2003.

register the tower, and sought cancellation of the proposed monetary forfeiture.⁵ On August 6, 2004, the Bureau issued a *Forfeiture Order* finding that CB willfully and repeatedly violated Section 17.4(a) of the Rules but reducing the forfeiture from \$3,000 to \$2,400 based upon its “good faith” attempts to register the tower prior to the second inspection on October 29, 2002. The Bureau, however, found that CB’s failure to check the status of its filing with the FAA until after the second inspection constituted a lack of due diligence. The time period focused on for the *NAL* and the *Forfeiture Order* was from the Atlanta Office’s initial inspection of the antenna structure on September 25, 2001, until the *NAL* was issued on January 23, 2003. In its Petition for Reconsideration (“Petition”), filed September 7, 2004, CB argues that the *Forfeiture Order* should be vacated, the forfeiture amount cancelled, and the reconsideration granted because the Commission acted in an arbitrary and capricious manner against CB.

III. DISCUSSION

A. Violation of Section 17.4(a) of the Rules

1. Background

4. Section 17.4(a) of the Commission’s Rules sets out requirements to tower owners regarding registration with the Commission. CB’s tower required registration with the FAA,⁶ and registration with the FCC by July, 1998.⁷ Forfeitures for violation of this rule have been imposed in numerous cases⁸ primarily because the Commission needs to be able to contact the tower owner, who is ultimately responsible for compliance with the Commission’s rules concerning the construction, marking and lighting requirements of towers.⁹

2. Discussion

5. CB does not claim that it followed the Commission’s registration rules. Rather, CB claims that it tried to follow the rules, but could not because the Commission did not respond to its inquiries and the registration process was within the control of the Commission, and not with CB. In detail, CB argues that the Commission acted in an arbitrary and capricious manner when it charged that CB’s failure to register its tower was “willful and repeated,” and that the Commission did not consider CB’s efforts to register its antenna structure before the Commission’s first inspection on September 25, 2001. CB also asserts that the Bureau did not explain why the cases that CB cited in its response to the *NAL* were apposite. CB averred that it made several attempts to register its tower by filing a “FCC Application for Antenna Structure Registration” (“ASR application”)¹⁰ for the antenna in September

⁵ CB Radio, Inc.’s statement in response to *Notice of Apparent Liability for Forfeiture*, (February 24, 2003) (“Response”).

⁶ CB’s antenna structure required notification to the FAA because the structure exceeded 200 feet in height. 47 C.F.R. § 17.7(a). FAA’s approved Form 7460-1 must accompany an FCC registration application for an antenna structure.

⁷ Also, subsequent to the expiration of the filing period, the Commission staff issued a Public Notice warning antenna structure owners to register any unregistered antenna structures subject to our requirement immediately or face possible monetary forfeitures or other enforcement action. *Public Notice, No-Tolerance Policy Adopted for Unregistered Antenna Structures*, 1999 WL 10060 (WTB 1999).

⁸ *Sutro Corporation*, 19 FCC Rcd 15274 (2004); *B&H Broadcasting Systems, Inc.*, 19 FCC Rcd 7611 (Enf. Bur. 2004); *St. Louis Mobile Systems Inc.*, 19 FCC Rcd 17712 (Enf. Bur. 2004); *FBS Wireless Corporation*, 19 FCC Rcd. 19477 (Enf. Bur. 2004), *petition for reconsideration pending*; *NetCom Technologies, Inc.*, 16 FCC Rcd. 9524 (Enf. Bur. 2001).

⁹ See 47 C.F. R. §17.2(c).

¹⁰ See FCC Form 854, “FCC Application for Antenna Structure Registration.”

1998, and refiled another one shortly after an October, 1998, reply from the Commission which stated that CB's first application could not be granted due to an inconsistency in its registration application. CB claims then to have written a letter to the Commission on July 12, 1999, inquiring about its application, and that it received no reply. After the Atlanta Office's inspection in September, 2001, and its *NOV* issued in October, 2001, WBEJ asserts that its station manager called the Commission to inquire about the *NOV*, but found no one who could answer her questions. According to CB, the station manager then contacted the Federal Aviation Administration ("FAA"), and after a second attempt at filing a Form 7460-1¹¹ with the FAA, the FAA issued a clearance for the tower. After the FAA clearance was granted in January, 2003, CB filed its registration again with the Commission, which the Commission granted on February 14, 2003. Because of these attempts to register the tower, CB claimed in its response that its violation was not willful, and cited several cases where the Commission had reduced or cancelled a forfeiture under similar circumstances.

6. It is well established that a licensee is charged with the responsibility of knowing and complying with all the requirements of the Act and the Rules.¹² That responsibility is not excused because the licensee may have attempted to comply but failed. In fact, there have been several cases specifically involving a violation of Section 17.4(a) where the licensee has described its attempts to file its tower registration, and the Commission has consistently found that such attempts do not satisfy the requirements of Section 17.4(a).¹³ In *Sutro Corporation*, for example, the Commission found the explanation by the owner of a tower, who made two attempts to register its tower, to be inadequate. The lengthy delays in Sutro's filings evinced a lack of diligence that did not entitle Sutro to a further reduction of the forfeiture amount.¹⁴ Also, in *B&H Broadcasting Systems*, B&H claimed it timely sent the required tower registration forms to the Commission. Because the Commission, however, had no evidence of any attempts by B&H to register its tower until after B&H had been notified by the Dallas Field Office, and B&H offered no evidence, the Commission found B&H had violated Section 17.4(a) of the Rules.¹⁵

7. Similarly, CB claims that it made several attempts to file its applications with the Commission and the necessary form with the FAA but "nothing happened."¹⁶ As stated in the *Forfeiture Order*, we found that CB made only "partial effort" to register the tower and displayed a lack of diligence by failing to check the status of its FAA filing until after the second inspection.¹⁷ As given above, the Rules in Section 17.4 clearly set out the registration requirements for tower owners. Further, the Rules provide that final FAA determination of "no hazard" has to accompany that registration or "processing of the registration may be delayed or disapproved."¹⁸ The fact that CB knew that its tower was not registered and continued to use the tower, made CB's violation of Section 17.4(a) of the Rules "willful

¹¹ CB's antenna structure required notification to the FAA because the structure exceeded 200 feet in height. 47 C.F.R. § 17.7(a). FAA's approved Form 7460-1 must accompany an FCC registration application for an antenna structure.

¹² See *Forfeiture Policy Statement*, 12 FCC Rcd at 17099; see also *Sitka Broadcasting Co., Inc.* 70 FCC 2d 2375, 2378 (1979); *L.T. Simes II and Raymond Simes*, 18 FCC Rcd 8977, 8980 (Enf. Bur. 2003); *Joy Public Broadcasting Corp.*, 14 FCC Rcd 11326, 11328 (CIB 1999).

¹³ See cases cited in note 8, *supra*.

¹⁴ *Sutro Corporation*, *supra* at 15277.

¹⁵ *B&H Broadcasting Systems, Inc.*, *supra* at 7613.

¹⁶ Petition, at page 4, referring to its January 23, 2003 response to the *NAL*.

¹⁷ *Forfeiture Order*, 18 FCC Rcd at 14870.

¹⁸ 47 C.F.R. § 17.4(d).

and repeated.”¹⁹ Further, a violation resulting from an inadvertent mistake or a failure to become familiar with the FCC’s requirements also is considered a willful violation.²⁰ We find CB’s efforts to shift the burden of its tower registration responsibilities to the Commission by stating that registration was within the control of the Commission and not CB, to be self-serving and unpersuasive. Neither were the Commission’s actions arbitrary and capricious,²¹ as demonstrated by its consistent holdings in the cases cited above.²²

8. Additionally, CB claims that the Commission acted in an arbitrary and capricious manner because the Commission did not address, either in the *NAL* or the *Forfeiture Order*, CB’s efforts to register its tower prior to its first inspection in 2001. As the Commission explained in the *Forfeiture Order*,²³ neither CB’s unsuccessful efforts to contact the Commission, nor the violations that occurred prior to the first inspection by the Atlanta Office, were used as a basis for the *NAL*, and thus were not discussed. The fact remains that when the Atlanta Office made its inspection in 2001, the tower was not registered, and remained unregistered until February, 2003. Despite several alleged efforts to register the tower, CB failed to do so through its own lack of diligence. The *Forfeiture Order* did recognize, however, that CB’s “partial effort to register WBEJ’s tower following the September 25, 2001, inspection does not warrant cancellation of the proposed forfeiture, but does warrant a reduction from \$3,000 to \$2,400.”²⁴

9. Finally, CB claims that the Commission did not address the cases that CB cited in its response. We do not understand how CB can reasonably make this argument, due to the fact that the *Forfeiture Order* clearly distinguishes the three Commission cases that CB cited.²⁵ It is not necessary to reiterate that explanation. In its Petition, CB has offered no new evidence nor cited any relevant case law to support a cancellation of the *Forfeiture Order*. We have reviewed carefully CB’s arguments pursuant to the statutory factors prescribed by Section 503(b)(2)(D) of the Communications Act of 1934 as amended (“Act”),²⁶ and in conjunction with *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines* (“Policy Statement”),²⁷ and Section 1.80 of the Rules.²⁸ We conclude that CB’s Petition should be denied and the *Forfeiture Order* affirmed, finding that CB willfully and repeatedly violated Section 17.4(a) of the Rules. As the forfeiture amount has already been reduced from the original amount set out in the *NAL*, we determine that no further reduction is appropriate and CB Radio is therefore liable for a forfeiture of \$2,400.

¹⁹ *Forfeiture Order*, at n. 11, citing *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 (1991).

²⁰ See *PBJ Communications of Virginia, Inc.*, 7 FCC Rcd 2088 (1992); *Standard Communications Corp.*, 1 FCC Rcd 358 (1986); *Triad Broadcasting Co., Inc.*, 96 FCC 2d 1235, 1242 (1984).

²¹ Cf., *Press Communications and Emmis Television License Corporation of Orlando*, 17 FCC Rcd 6739, 6740 (2002) (dismissing a claim of “arbitrary and capricious”).

²² See cases cited in note 8, *supra*, and discussion of *Sutro Corporation* and *B&H Broadcasting Systems, Inc.* at ¶ 6, *supra*.

²³ See *Forfeiture Order*, at note 9.

²⁴ *Forfeiture Order*, 18 FCC Rcd at 14871.

²⁵ See *id.*

²⁶ 47 U.S.C. § 503(b)(2)(D).

²⁷ 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

²⁸ 47 C.F.R. § 1.80.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act²⁹ and Section 1.106 of the Rules,³⁰ CB Radio, Inc.'s Petition for Reconsideration of the August 6, 2004, *Forfeiture Order* **IS DENIED**.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.³¹ Payment may be made by credit card to the Commission's Credit and Debt Management Center at (202) 418-1995 or by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director – Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.³²

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to CB Radio, Inc., 626 ½ E. Elk Avenue, Elizabethton, TN 37643, and Dennis Kelly, Esq., P.O. Box 41177, Washington DC 20018-0577.

FEDERAL COMMUNICATIONS COMMISSION

Kris A. Monteith
Chief, Enforcement Bureau

²⁹ 47 U.S.C. § 405.

³⁰ 47 C.F.R. § 1.106.

³¹ 47 U.S.C. § 504(a).

³² See 47 C.F.R. § 1.1914.